

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FILED  
MAR 2 2005  
U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
BOSTON

MELISSA OSTRANDER, Plaintiff)

v.

HUSSMANN CORPORATION,  
Defendant

)  
)  
)  
)  
)

CIVIL ACTION NO. 04-30197-MAP

U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
BOSTON

DEFENDANT'S MOTION TO COMPEL DR. LEVETON'S  
COMPLIANCE WITH RECORDS SUBPOENA

Now comes the defendant and moves the court to order Miriam Leveton, Ph.D., who provided psychotherapy treatment to the plaintiff, to comply its with the records subpoena. A true copy of the subpoena showing proper service is appended hereto as Exhibit A.

As grounds, the plaintiff has put her medical and psychological condition in issue in this case, and the non-party, Dr. Leveton, has neither provided the subpoenaed records when they were due nor availed herself of her options provided under Fed. R. Civ. P. 45(c). Dr. Leveton has indicated to defendant's counsel that she cannot release the subpoenaed records without an authorization from the plaintiff which she has not been able to obtain.

WHEREFORE, the defendant respectfully request the court to order Dr. Leveton to fully and completely comply with the defendant's records subpoena.

HUSSMANN CORPORATION, Defendant

By JOHN B. STEWART  
JOHN B. STEWART  
MORIARTY, DONOGHUE & LEJA, P.C.  
1331 Main Street  
Springfield, MA 01103  
(413) 737-4319

CERTIFICATE OF CONSULTATION

I hereby certify that I have spoken to Dr. Leveton on two occasions and she indicated she could not comply with the subpoena because she did not have authorization to release the plaintiff's medical records from the plaintiff. I have fully complied with the letter and spirit of Local Rules 7.1 and 37.1 prior to the filing of this motion.

JOHN B. STEWART  
JOHN B. STEWART  
MORIARTY, DONOGHUE & LEJA, P.C.

CERTIFICATE OF SERVICE

I hereby certify I served a true copy of the within document upon Dr. Leveton and each other party or counsel of record by first class mail, postage prepaid on March 1, 2005.

JOHN B. STEWART  
JOHN B. STEWART  
MORIARTY, DONOGHUE & LEJA, P.C.

# EXHIBIT A

AO88 (Rev. 1/94) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

DISTRICT OF

MASSACHUSETTS

MELISSA OSTRANDER, Plaintiff

V.

**SUBPOENA IN A CIVIL CASE**

HUSSMANN CORP.

Case Number:<sup>1</sup> 04-30197-MAP

TO: Miriam Leveton, Ed.D.  
 123 Dwight Road  
 Longmeadow, MA 01106

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Certified copies of all records in your possession, custody and/or control concerning treatment to Melissa Ostrander (d. o.b. 4/25/84), including but not limited to treatment notes, intake questionnaires, and documents concerning history, testing, diagnosis, prognosis, evaluation, disability, causation, recommendations, from 4/28/02 to present.

PLACE

Records should be mailed or delivered to: Atty. John B. Stewart, Moriarty,  
 Donoghue & Leja, P.C., 1331 Main Street, Springfield, MA 01103

DATE AND TIME

2/14/2005 10:00 am

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

*John B. Stewart*

Jan 10, 2005

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

John B. Stewart, Atty. for Def., Moriarty, Donoghue & Leja, P.C., 1331 Main Street, Springfield, MA 01103

(See Rule 45, Federal Rules of Civil Procedure, Parts C &amp; D on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.